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FOR CLASSIFICATION MISMATCH IN PARA 6 - CHANGED TO (U)

E.O. 12958: N/A

TAGS: PGOV, PREL, PINR, MX

SUBJECT: IT'S OFFICIAL: CALDERON DECLARED PRESIDENT-ELECT

REF: MEXICO 4368

1. (U) Summary: On Tuesday, September 5, the Mexican Federal Electoral Tribunal (TEPJF) declared Felipe Calderon President-elect, ending rival candidate Andres Manuel Lopez Obrador's (AMLO) two month-long legal challenge of the election results. In a unanimous decision, the seven magistrates acknowledged various irregularities in the election process, most notably the improper intervention of President Fox in the campaign, but said these irregularities taken together provided insufficient grounds to invalidate the election. Tallying up the final vote total, the TEPJF found that Calderon won by a margin of 233,831 votes (0.56%) of the 41.6 million cast. While the magistrates announced their decision, several hundred angry AMLO supporters noisily protested outside, preventing attendees from leaving for a

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short time following the hearing's conclusion. The TEPJF's decision was widely expected and represents the closing act in AMLO's legal challenge. Meanwhile, AMLO's extra-legal challenge shows no signs of waning. End summary.

Calderon By A Nose

2. (U) In its decision, the TEPJF stipulated the final vote tally, taking into account the precincts it annulled in its August 30 decision due to irregularities, and the results of the August 9-14 recount (reftel). The final results showed Calderon with 14,916,927 votes, compared with AMLO's 14,683,096, for a difference of 233,831 votes or 0.56%. The recount shrunk Calderon's margin of victory by a bare 0.02%.

Fox Comes In For Criticism

3. (U) After the TEPJF Secretary read the proposed decision, each of the seven magistrates spoke in turn, explaining their reasons for supporting it. All agreed that while the election process had imperfections -- most cited President Fox's oblique endorsement of Calderon and criticisms of AMLO during the campaign, as well as the pro-Calderon advertising of some business groups -- all concluded that these actions were not sufficient to undermine the overall integrity of the election. Addressing herself to the Mexican public, Magistrate Alfonsina Berta Navarro Hidalgo, one of the two authors of the final decision, observed that no election was perfect and that even the improper actions of a single person could damage the process. She added, however, that annulling an election was an extraordinary remedy appropriate only in exceptional circumstances, when a complainant had clearly proven major irregularities that had a transcendental effect on the outcome of the election. She concluded that while there were a number of irregularities in this election and that no party was entirely guilt-free, the irregularities were not sufficiently serious to undermine the election's overall integrity.

4. (U) Magistrate Eloy Fuentes Cerde, the other co-author of the decision, noted the contradiction in AMLO's alternate demands for a nationwide recount and the annulment of the entire election. Likewise, he noted the inconsistency of the Party of the Democratic Revolution's (PRD) acceptance of the very favorable results of the congressional elections, while protesting the unfavorable results of the presidential election, when both elections were carried out on the very same day and by the very same election workers. In an

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oblique reference to President Fox and to those in the business community who improperly sponsored ads critical of AMLO, one magistrate said that while some citizens "did not rise to the circumstances" of the moment, this campaign nevertheless was cleaner than most. In a similarly oblique reference, TEPJF President Leonel Castillo said he hoped powerful political and economic actors would stay within their proper role in future campaigns.

An Angry Crowd Awaits The Inevitable

5. (U) While the magistrates met before a packed courtroom, hundreds of AMLO supporters protested loudly outside, with the sound of numerous large firecrackers punctuating the hearing. One protester threw an egg at the TEPJF, although there appeared to be few other aggressive acts. A group of protesters paraded in front of television cameras a coffin with the word "democracy" painted on it, a prop that had been recycled from similar use in an earlier protest in Mexico city's Zocalo (Central Square). The TEPJF security staff did not permit anyone to leave the court premises foraa approximately 40 minutes after the hearing concluded, until the demonstrators calmed somewhat.

What's Next?

6. (U) Although the TEPJF's decision is not subject to a appeal, AMLO appears poised to set an unfortunate precedent, being the first complainant in the TEPJF's 10 year history not to accept a ruling. Within approximately the next 24 hours, the TEPJF will deliver to Felipe Calderon his "Certificate of Majority," confirming his victory. The press has reported that both Calderon and AMLO plan to offer public remarks at 7:00 pm this evening, and that Fox plans to address the nation at 8:30 pm. Los Pinos has announced a meeting between Calderon and President Fox, scheduled for 10:00 am September 6.

Comment: Terra Incognita Ahead

7. (SBU) With the TEPJF's declaration of Calderon as President-elect, AMLO has reached the final stop on the legal track for challenging the election results. Yet his appetite for protest appears far from sated. Whatever strategy he and his supporters now embark on falls outside the bounds of institutionality, and there is neither a political road map nor an historical precedent to guide the way. The biggest

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variable of all will be the extent to which AMLO continues to maintain the PRD unified behind him. While he has been remarkably successful in doing so up until now, with the TEPJF's final decision, it will become increasingly difficult for the PRD to continue to straddle the conflicting realms of legality and extra-legality. Likewise, if the party aspires to any role greater than that of a spoiler for Calderon's agenda, it will have to distance itself from its defeated candidate. Once he loses the support of his party, AMLO's influence will inevitably wane.

8. (SBU) Finally, the TEPJF proved itself equal to the demands of this important juncture. While it has been reported that the magistrates themselves were not without their differences of opinion, in this extraordinary moment, they were able to put their differences aside and reach a decision that all felt comfortable supporting. Although the unanimity of the Tribunal's decision will be of no consequence to AMLO's most diehard supporters, we believe it will help restore the confidence of ordinary Mexicans in the election process.

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